

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION BOARD

In the Matter of  
**Tri-State Federal Credit Union**

*Docket BD-18-10*

**Decision and Order on Appeal**

This matter comes before the National Credit Union Administration Board (Board) on appeal by Tri-State Federal Credit Union (Appellant or FCU). The Region II Director denied the Appellant's application to add the members of the YMCA of East Liverpool, Ohio to its field of membership (FOM), denied Appellant's request for reconsideration, and, when the Appellant submitted a second request to the region for reconsideration, as provided in the Chartering Manual, it was treated as an appeal to the NCUA Board.

**Background**

The Appellant is a multiple common bond credit union with its main office located in Midland, PA, with another location in Corapolis, PA. Midland, in western Pennsylvania, is about ten miles from East Liverpool, OH, where the Appellant has another location. The FCU was chartered in 1935, and currently has approximately 5,500 members, and assets of approximately \$40 million.

The YMCA in East Liverpool was incorporated in 1891 and currently has three locations, offering a range of facilities to members typical of YMCAs, including: weights and work-out equipment; sauna and steam rooms; a pool; a racquetball court; and in-door walking track. Other activities and services are available for additional fees and are also available to nonmembers, including dance, fitness, and exercise classes, and childcare.

**Procedural Summary**

On January 13, 2010, the FCU applied to Region II to add the 65 employees and 6,000 members of the YMCA of East Liverpool, OH to its FOM.

On February 24, 2010, Region II granted an amendment to the FCU's charter to add the employees but denied the request to add YMCA members, determining the association was based primarily on a customer-client relationship.

On May 14, 2010, the FCU submitted a request for reconsideration of the region's denial of its request. The FCU's request is dated March 22, 2010, but the region has no record of receipt until May 14<sup>th</sup>.

On May 17, 2010, Region II again denied the FCU's request, relying on the same rationale as in its initial denial.

On July 20, 2010, the FCU submitted a second request to the region for reconsideration, which, as provided in the Chartering Manual is to be treated as an appeal to the NCUA Board. Chartering Manual, Chapter 2, Section III C.5.

On August 31, 2010, Mary Rupp, Secretary of the Board, wrote the FCU and acknowledged receipt of the appeal.

### **Issue for Appeal**

The issue on this appeal is whether the YMCA of East Liverpool, Ohio meets the standards for an associational common bond.

### **Analysis and Applicable Law and Policy**

The Federal Appellant (FCU) Act, states that "a multiple common bond credit union consists of more than one group, each of which has a common bond of occupation or association." 12 U.S.C. §1759(b)(2). This same definition is used in the Chartering Manual. Ch. 2, I.A.1, p. 2-1; App. A, p. A-2. See *also* Ch. 2, IV.A.1, p. 2-30. While the FCU Act does not define "common bond," the Board has done so in its chartering policy:

The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a credit union or being included in an existing federal credit union's field of membership: occupational . . . and associational – membership in the same association.

Chartering Manual, App. A, A-1. The Board has also defined associational common bond and set certain requirements in the Chartering Manual for an association to qualify, noting the factors NCUA will consider in evaluating associational groups:

A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

. . . .

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a

group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, which includes:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- Whether the association sponsors other activities;
- The association's membership eligibility requirements; and
- The frequency of meetings.

Chartering Manual at p. 2-15, 2-16. Further, as particularly relevant to this appeal, the Chartering Manual states:

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met.

Chartering Manual at p. 2-16.

The Board has considered the FCU Act provisions governing chartering, the Board's regulatory implementation of the Act in NCUA's Field of Membership and Chartering Manual (the Chartering Manual), prior Board and regional decisions on associational groups, and, as specific to this case, the Appellant's application to add the association, the regional denial, and the Appellant's request for reconsideration and its denial.

In reviewing the associational group factors set out in the Chartering Manual, the Board concludes the monthly payments should not be considered dues; rather they appear to be a payment for services. The YMCA has various membership categories with varying monthly fees depending on the anticipated use of the facility, for example, membership for one adult is less than for a couple or a family. Many qualifying associations have different classes of members with different dues' rates, though these are typically paid annually; the YMCA's monthly fees appear to represent payment for access to the YMCA facility rather than dues. On voting and meetings, the YMCA's bylaws indicate there is one annual meeting at which the "Trustees" are elected by the "Voting Members of the Association." There is no other provision for member meetings and, in fact, the bylaws fail to state how often the Trustees meet. The bylaws fail to state the number of Trustees and do not define who qualifies as a voting member. Regarding sponsorship of "other" activities, the YMCA offers a broad range of activities for its members but basically it is engaged in maintaining the fitness facilities, offering fitness classes, and childcare. There are no

eligibility requirements other than paying monthly fees and, as noted above, only one meeting, an annual meeting, is identified in the association's bylaws.

In addition to concluding the YMCA does not meet the associational criteria in the Chartering Manual, the Board also concludes this YMCA is an association based primarily on a customer-client relationship. For chartering purposes, a *nonprofit* association may still be determined to have a client-customer as its primary purpose. See *e.g.*, Chartering Manual, at p. 2-16 (fraternal association offering insurance may qualify but not if it is a condition of membership). Although the YMCA is a non-profit organization, the monthly membership fees at the YMCA are indicative of a client-customer relationship. The amount, monthly assessment, and structure of the fees are similar to, though somewhat lower than, fees at for-profit athletic facilities. The YMCA fees include sales tax, and there is no membership category that does not include access to fitness facilities. Typically, associations that qualify as an FOM group addition charge a one-time membership fee or annual dues. While qualifying associations may have different classes of memberships and dues, the Board concludes the YMCA charges monthly fees varying with the level of anticipated use of the facility. Further, once a member is two months in arrears on monthly fees, he or she is denied access to the facility. Thus, "dues" are linked directly to facility to access.

Based on review of these factors, the Board concludes the YMCA does not meet the requirements for an associational group.

### **Order**

Based on the NCUA Board's determination the associational common bond requirements have not been met, it is ordered as follows:

The Region II Director's decision denying Tri-State Federal Credit Union's application to add the members of the YMCA of East Liverpool, Ohio to its field of membership is upheld and the appeal is denied.

So **Ordered** this 16<sup>th</sup> day of December, 2010, by the National Credit Union Administration Board.

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Mary F. Rupp  
Secretary of the Board